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An Outline of China's Natural Resources Law

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AN OUTLINE OF CHINA'S NATURAL RESOURCES LAW

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A Short Introduction to Natural Resources in China

The characteristic feature of natural resources in China lies in the fact that the total reserves are abundant, but China's overpopulation reduces this advantage to quite a low per capita amount.

Land

China's land totals about one billion hectares* (not including sea areas), of which one tenth is used for cultivation. The per capita land area represents only one-fifth of the world's per capita land mass. The per capita plough land is only one-fourth of the world's average level, ranked 113th in the world.

Water

China's annual water reserve, the seventh largest in the world, is 2,800 billion cubic meters, including both surface and underground water. The per capita annual water reserve is, however, 2,700 cubic meters; that is, 88th in the world. Water resources in China are extremely unbalanced: large amounts of water in the South and relatively little in the North. In certain areas of the North, per capita water supply is so small that its counterpart can be found only in the most arid countries.

Mineral Resources

Of the 150 kinds of minerals discovered so far, there are identified reserves of 136. The total converted value of 45 principal minerals in reserve is the third largest in the world. The per capita converted value of this reserve is only two-

thirds of the world's average, or 80th.

Forestry

The total forested area is about 115 million hectares. The total timber reserve is estimated at 9.1 billion cubic meters. The per capita forested area is 17 percent of the world's average. The forest coverage in China is about 12 percent, lower than the world's average (18.7 percent).

Grasslands

The total area of grasslands in China is about 400 million hectares, of which 300 million are suitable for grazing and is the world's third largest after Australia and the USSR. But grass yield is quite low, limiting the ability to raise livestock.

Fishery

The fishing ground on the continental shelves is about 150 million hectares. The fresh water surface area is about 18 million hectares, of which 8.5 million hectares are suitable for aquatic farming. Aquatic production in 1984 totaled 6.19 million tons, the third largest in the world (after Japan and the USSR). However, the per capita aquatic production in 1979 was only 5 kilograms, representing 30 percent of the world's average (16.5 kilograms).

Wildlife

China, one of the richest countries in wildlife resources, possesses 10 percent of the total wildlife species in the world. Included are 1,186 species of birds, 450 species of mammals, 210 species of amphibians, 320 species of reptiles and more than 2,000 species of fish. So rich in number, China also possesses many rare animals which enjoy world celebration, such as the giant panda,

* A hectare is about 2.5 acres.

the golden monkey, the tiger of Huanan, to name only a few.

For many years there was no strict administration of natural resources, and exploitation was out of control. Seizure of land, excavation of minerals, over-timbering and denudation of forests, over-grazing on pasturage and over harvesting of fish, these practices have been widespread throughout the country and have resulted in over consumption, serious waste and even disastrous destruction of natural resources. Now the most outstanding problems are the acute reduction of plough land and the shortage of water resources. From 1957 to 1986, plough land was reduced annually in the whole country at a rate of about 0.54 million hectares, making room for urbanization, industrialization and peasant residences. In the seven northern provinces and municipalities directly under the Central Government (e.g. Beijing, Tianjin, Hebei and Shanxi) social and economic development has surpassed that which the water resources in these regions could support. Immediately after the severe drought in 1972, water crises struck successively in the North of China. The peoples' life was seriously affected and industry and agriculture were strenuously hampered. Take the example of forests. The average annual growth in the whole country is 230 million cubic meters. In contrast, the average annual consumption in recent years has attained 290 million cubic meters. Twenty years from now, the experts estimate, China's richest forests in the Northeast could disappear.

We can see from the above discussion that China is confronted with a crucial resources problem. We have to pay special attention to natural resources law.

China's Law System for Natural Resources and Its Legislative Process

The word "law" suggests two meanings in China, special and general. Special law refers to statutes made by the National People's Congress (NPC) and its Standing Committee. An example is the Forestry Law. General law includes administrative rules and regulations issued by the State Council and local regulations enacted by the provinces, autonomous regions and municipalities directly under the Central Government. China's legal system for natural resources is composed of laws, administrative regulations, rules, and local regulations. Classified by the nature of the resources, the legal system contains bodies of law related to forestry, grassland, land, fisheries, mineral resources, water, and conservation of wildlife. Within these general areas are a number of specific laws. Forestry law, for example, includes Forestry Law (by the NPC's Standing Committee), Rules for the Implementation of Forestry Law (by the State Council) and Methods for the Management of Forest Reserve Archives (by the Forestry Ministry), etc.

The State Council of the People's Republic of China is the central government of China and is composed of several ministries and commissions. Administratively, each kind of natural resource corresponds to its special ministry or commission or to the departments directly under the State Council. For example, forests and wildlife are administered by the Forestry Ministry; grasslands and fisheries by the Agriculture Ministry; water by the Ministry of Water Resources; mineral resources by the Geology and Mineral Ministry; and land by the State Land Administration. Resources law, when formulated in the Central Government, is drafted usually by the responsible departments and then examined and verified by the State Council. The State Council either directly

issues administrative rules and regulations for natural resources, or presents bills for resources law to the NPC's Standing Committee. Resources laws enacted by the NPC or its Standing Committee are promulgated by the President of the People's Republic of China.

The Bureau of Legislative Affairs of the State Council is responsible for the examination and modification of all drafts of resources bills and administrative rules and regulations for natural resources that it receives. Following that, the Bureau submits these drafts to the executive or plenary meeting of the State Council for discussion.

The Basic Structure of China's Natural Resources Law

Basically, each natural resources law consists of four components: regulations about ownership and the right to the use of natural resources; regulations about protection and regeneration of natural resources; regulations about exploitation and utilization of natural resources; and regulations about legal liability.

Regulations About Ownership and Rights to the Use of Natural Resources

China is a socialist country. Natural resources are regarded as important means of production. Therefore, each resources law specifies precisely the ownership of natural resources (the only exception is fisheries law). The principal form of the ownership of resources is the state (nation) ownership, i.e. ownership by the whole people. Mineral resources, land in the urban areas, and wildlife belong to the state. Forests, grasslands, water and land in rural and suburban areas are properties either of the state or of collectives.

China's resources law reflects the principle of partition of ownership and right to the use. State-owned land, grasslands and water surfaces, after the proper legal procedures, can be at the disposal of units under state or collective ownership. State-owned mineral resources can be exploited by units under state or collective ownership after they acquire the right to use i.e., mining rights. Some of the minerals can be excavated by individuals. The collectively-owned land, forests (forest soil), grasslands (pastures), water surfaces and beaches used by units under state or collective ownership can be contracted to, and managed by, collectives or individuals. State-owned or collective-owned hills and land which can be planted can be contracted to collectives or individuals.

In order to protect legal property and right to use, to encourage owner and user initiative in improving management, exploitation and utilization of natural resources, and also to deal with conflicts over ownership, the law stipulates that natural resources like forests, grasslands, and water will be registered and recorded by the government. Upon verification, the government issues certificates to affirm the ownership and the right to the use of such resources. Disputes over the ownership and right to the use of natural resources, the law stipulates, can be settled through consultation or mediation; if these fail, the government can be asked to intervene. The government's decision can be challenged in a court in certain circumstances.

Regulations About Protection and Regeneration of Natural Resources

First, the law stipulates that the protection and regeneration of natural resources are the government's responsibility and the user's obligation.

Concrete and specific regulations concerning the role of government are described in the Forestry Law:

- governments at all levels should organize reforestation, obligatorily participated in by the whole people;
- governments at all levels should work out reforestation plans and organize people of all walks of life to accomplish the tasks specified in the plans;
- local governments at various levels should require the relevant departments to set up agencies to be responsible for forest protection. They shall, in light of actual need, increase facilities in large forest areas to strengthen forest protection, urge grass-roots units to formulate forest protection pledges and mobilize the masses to protect the forests; and
- local governments at various levels should take every precaution against any possible forest fires and organize extinguishment in case of fires.

Land Law specifies the users' duties as follows:

- units or individuals using state-owned land have the duty to protect, maintain and make rational use of the land; and
- collectives or individuals to whom the land is contracted have the duty to protect the

land and use it rationally and in the range of usages predefined in the contract.

The Forestry Law defines the duty of all citizens to include: tree planting, reforestation and forest conservancy. It stipulates that institutions, armies and grass-roots units accept the responsibility of reforestation in various areas.

Second, economic stimulation is adopted to encourage the people to take measures in protecting and regenerating natural resources. Rewards are granted to prominent users. For example, the Forestry Law stipulates some measures to financially encourage reforestation:

- financial support or long-term credit shall be given to collectives or individuals for tree planting and reforestation based on relevant regulations established by the state and the local governments;
- taxes shall be imposed for reforestation; and
- an amount of capital shall be taken out from coal and paper departments according to the quality of coal and products of pulp and paper, for special forests, for mine timbers, and paper.

Third, strict measures are taken against disasters. The Forestry Law and the Grassland Law have detailed stipulations against fire, plant diseases and insect pests, including the establishment of the high fire danger period, the creation of the system of responsibility against fire, installation of fire equipment, and measures of extinguishment.

Fourth, all activities which damage and destroy natural resources are limited and prohibited. The corresponding measures are issued. For example, the Grassland Law stipulates that all activities on grasslands, ranging from cultivation, bush cutting, medical plant searching, to the use of vehicles and grazing of livestock, are regulated in detail. Some activities are forbidden, some limited, and some must get the permission of grassland users. Other activities are to be granted by the government concerned.

Regulations About Exploitation and Utilization of Natural Resources

Stated first are the application requirements for exploitation and utilization of natural resources.

The Land Law establishes the categories of application:

- applications for land involving state construction projects, which have been grouped into the investment schedules financed by the state's fixed capital or permitted to construct, must be submitted by presenting a project plan or other documents of approval which are granted by the appropriate authority under the State Council or by a local government at or above the county level in accordance with procedures specified for state capital construction and;
- town or village run enterprises applying for land use must present a project plan description or other documents of approval issued by a local government at or

above county level.

The Land Law rules out the cases in which the peasant applies for other house sites after he has sold or leased his house.

The Forestry Law stipulates that state-owned forestry enterprises must submit documents of survey and design of the cutting areas when they request cutting licenses. Other units must submit documents stating the purpose, location, area, types and current health of the forests, the growing stock involved, and the method of cutting, as well as regeneration measures.

Second, exploitation and utilization of natural resources must undergo certain approval programs.

The Forestry Law stipulates that anyone who wants to cut down forest trees must apply for a cutting license from the appropriate forestry department of the county government. The forestry department, in turn, shall not issue cutting licenses in excess of the approved annual cutting quotas.

The Land Law stipulates that the area of land demanded for state construction be subject to the approval of the local government. If the area is very large, construction must be approved by the State Council.

The Water Law provides that exploitation and utilization of water resources must undergo comprehensive scientific survey, investigation, and evaluation. The projects vary within different river basins, and are based on a unified point of view. Comprehensive projects within important river basins, determined by the state, are jointly formulated by the appropriate water administration department of the State Council and the concerned provincial governments before presentation to the State

Council for approval. Comprehensive projects in other river basins or areas are directed by the competent department of water administration of governments at or above the county level, together with departments and regions concerned. They are then presented to the government of the same level for approval and must, at the same time, be presented to the appropriate water administration department for record-keeping.

Third, necessary measures are taken to prevent non-rational utilization of natural resources.

The Land Law stipulates that if the unit which has acquired the right to the use of state-owned land neglects the land for two years or uses the land for other purposes without the approval of the original institution, the land administration department will withdraw the land use right and, upon approval of the government at the county level, will cancel the land use license.

Under the Fisheries Law, those with rights to use state-owned water surfaces and beaches for the purpose of rearing fish, but who do not use them for one year without proper explanation shall be subject to an administrative order to exploit and utilize them within a definite period of time. If this order is not observed, the license will be revoked. Fishing with explosives and poisons or in prohibited fishing areas and during closed seasons with forbidden fishing gear and methods, or with fishing nets with meshes smaller than the minimum prescribed sizes--all of these activities are listed in detail and strictly forbidden. Any practices against the above regulations will lead to the withdrawal of the fishing license.

The Forestry Law stipulates that if foresters violate regulations in cutting areas, the department which issues cutting licenses has the power to withdraw the licenses until

the errors are corrected.

Regulations About Legal Liability

China's natural resources law establishes penalties for those who violate the law. The legal liability can be divided into four categories.

First, there are punishments for the illicit seizure and use of natural resources. By illicit seizure and use of natural resources, we mean:

- unlawful encroachment upon land without approval or with fraudulently obtained approval;
- excavation without a mining license or beyond the approved limits of the mining area; and
- unlawful tree felling or forest denudation, including felling without a cutting license.

The law, based on the following principles, outlines punishment for the illicit actions mentioned above:

- to avoid damages to the state or those organizations which have the right to use the resources, whoever illegally mines or cuts down trees must compensate for the losses;
- to avoid or limit damages to natural resources, those who illegally encroach upon the land must restore the land; those who illegally mine shall be ordered to stop excavation; whoever illegally cuts down trees shall be ordered to plant several dozen times the

number of trees cut down; whoever denudes forests or other woodlands shall be ordered to plant five times the number of trees denuded.

- So that law violators shall not profit, those who unlawfully encroach upon the land shall be ordered to restore such land and demolish, within a definite period of time, any newly erected structures or other installations, or such structures or installations shall be confiscated and fines shall be imposed concurrently. Anyone who mines without a mining license shall have his extracted mineral products and unlawful proceeds confiscated and may be fined concurrently. Those who unlawfully cut down trees shall pay a fine equal to three to ten times the unlawful income. Whoever denudes forests or other woodlands shall pay a fine equal to three to five times the unlawful income.

Second, there are punishments for state officials who illegally approve the use of natural resources.

As the laws were being formulated, it became more and more obvious that many problems related to the unlawful approval of land occupation and tree felling. We cannot stop this fever of illicit encroachment or felling without punishing the state officials who unlawfully approve these actions. Therefore, the Land Law stipulates that if units or individuals without authority to approve requisition or use of land unlawfully approve occupation of land, or if they

overstep their approval authority, disciplinary sanctions shall be adopted. Those who take bribes shall be investigated for criminal responsibility. The Forestry Law stipulates that, in cases where forest tree cutting licenses are issued in excess of the approved annual cutting quotas, or by over-stepping authority in violation of the law, the personnel directly responsible will face administrative sanctions. In cases where serious damage is caused to the forest, the personnel directly responsible shall be investigated for criminal responsibility.

Third, there are punishments for any damage (destruction) of resources.

Such punishments include:

- an immediate cessation to illicit actions;

- repair of any losses. Whoever damages soil shall be ordered to make rectification within a definite period of time; whoever damages forests shall plant trees; whoever damages grasslands shall restore the vegetation;

- payment of compensation; and

- payment of fines.

Fourth, there is punishment for illegal transfer of resources ownership or rights to the use of resources, and for the counterfeiting and resale of licenses.

Those who unlawfully transfer land, mineral resources and fishing licenses through sale or other means, those who sell a mining right or use it as a pledge to obtain a loan, and those who counterfeit or resell forest cutting licenses shall have their unlawful income confiscated, be fined and have their licenses revoked. If the circumstances

concerning forest tree cutting licenses are serious, criminal responsibility shall be investigated.

* * * * *

In the last few years, the Chinese government has become more and more aware of the seriousness of the natural resources problem and is trying its best to prevent the resources from decreasing rapidly. However, this is just a beginning and there is a long, long way to go. In this connection, we would like to learn everything useful from all the advanced countries, including the United States, and exchange the experiences and information with our counterparts in other countries in order to improve our natural resources law system.